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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

**OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM**

I, Gary S. Goldberg, hereby object to the Notice of Trustee's

Determination of Claim dated July 31, 2009 ("Determination Letter"), attached as Exhibit A, as described herein.

## BACKGROUND

1. I am “customer,” as defined by the Securities Investor Protection Act of 1970 (“SIPA”), of Bernard L. Madoff Investment Securities, LLC (“BMIS”).
2. My final BMIS statement for Account Number 1ZB394, dated November 30, 2008, states that I own securities valued at \$168,984.62 (“Final BMIS Statement”).
3. On December 11, 2008, the above-captioned liquidation proceeding was commenced against BMIS, pursuant to SIPA. *See Order, Securities and Exchange Commission v. Madoff*, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Dkt. No. 4]. Irving Picard was appointed Trustee (“BMIS Trustee”), charged with overseeing the liquidation of BMIS and processing customer claims for money pursuant to SIPA. *Id.*; 15 U.S.C. 78fff-1(a).
4. On December 23, 2008, the Court issued an Order directing the Trustee to disseminate notice and claim forms to BMIS customers and setting forth claim-filing deadlines. *See Order* [Dkt. No. 12]. Upon information and belief, the BMIS Trustee disseminated notice and claim forms to BMIS’s customers in accordance with the Court’s Order.
5. The December 23, 2008 Order further provided that, to the extent the BMIS Trustee disagrees with the amount set forth on a customer claim form, the BMIS Trustee “shall notify such claimant by mail of his determination that the claim is disallowed, in whole or in part, *and the reason therefor . . .*” *See Order* at 6 (emphasis added) [Dkt. No. 12].
6. On or about January 1, 2008, I submitted a

customer claim form to SIPC setting forth my claim in the amount of \$168,984.62. *See* Customer Claim for Acct. No. 1ZB394 (Exhibit B) ("Customer Claim"). My Final BMIS Statement was submitted with my Customer Claim. *See* Customer Claim (Exhibit B).

7. On October 19, 2009, the BMIS Trustee sent me the Determination Letter denying my claim.

*See* Determination Letter (Exhibit A).

8. I hereby object to the Determination Letter for the reasons described below.

#### **GROUND FOR OBJECTION**

9. First Objection. The Determination Letter fails to comply with this Court's December 23, 2008 Order, which directs the BMIS Trustee to satisfy customer claims and deliver securities in accordance "with the Debtor's books and records." Dec. 23, 2008 Order at 5 [Dkt. No. 12]. Included with my Customer Claim was my final BMIS statement showing a final balance of \$168,984.62. *See* Customer Claim (Exhibit B). The Final BMIS statement is the best evidence of the amount owed based on the Debtor's books and records. Accordingly, the claim should be allowed in the full amount of \$168,984.62.

10. Second Objection. The Trustee has set forth no legal basis for disallowing my Customer Claim in full as filed. The only explanations set forth in the Determination Letter are that (1) "[n]o securities were ever purchased for your account," and (2) the "money you withdrew from your account ... set forth in Table 1 ... is greater than the amount that was deposited with BLMIS for the purchase of securities." Determination Letter at 1 (Exhibit A).

Neither of these purported grounds for disallowance have any statutory or other legal basis.

Moreover, the Determination Letter:

(a) does not clearly provide “the reason” for the disallowance, as required by the Court’s December 23, 2008 Order, *see* Order [Dkt. No. 12];

(b) is inadequate to rebut the prima facie validity of my Customer Claim as provided in Section 502(a) of the Bankruptcy Code and Fed. R. Bankr. P. 3001(f); and

(c) violates general principles of applicable law requiring that an objection to a proof of claim set forth, at a minimum, the relevant facts and legal theories upon which the objection is based. *See, e.g.,* Collier on Bankruptcy ¶ 3007.01(3) (15th ed.) (“[A]n objection to a claim should . . . meet the [pleading] standards of an answer. It should make clear which facts are disputed; it should allege facts necessary to affirmative defenses; and it should describe the theoretical bases of those defenses.”); *In re Enron Corp.*, No. 01-16034, 2003 Bankr. LEXIS 2261, at \*25 (Bankr. S.D.N.Y. Jan. 13, 2003) (same).

11. Third Objection. 15 U.S.C. Section 78fff-2(b) provides that a customer’s claim shall be allowed in the amount of the customer’s “net equity.” 15 U.S.C. § 78fff-2(b). Upon information and belief, the Trustee objects to my Customer Claim on the ground that “net equity” should be determined by principal contributed to the account less any withdrawals, without regard to any gains reflected in the Final BMIS Statement or prior BMIS statements. *See* Determination Letter Table 1. *See* also “Another View: Unwinding Madoff Fraud Fairly,” Deal Blog. NY times.com (May 6, 2009). This is incorrect for the following reasons:

(a) The Trustee’s construction of the statute ignores SIPA’s express language which defines “net equity” as

the dollar amount of the account or accounts of a customer, to be determined by --

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date, all securities positions of such customer (other than customer name securities reclaimed by such customer); minus

(B) any indebtedness of such customer to the debtor on the filing date;

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15 U.S.C. § 78lll(11). The Trustee's proposed formulation has no support in the language of the statute or interpreting case law and in fact, adds words and concepts to the statute which do not exist.

(b) SIPA's legislative history emphasizes Congress' intention that the statute protect customer expectations by ensuring that customers of retail brokerage firms can rely on their account statements. The BMIS statements received by me stated that I owned a list of blue chip securities. It makes no difference whether the securities were purchased:

A customer generally expects to receive *what he believes* is in his account at the time the stockbroker ceases business. But because securities may have been lost, improperly hypothecated, misappropriated, *never purchased*, or even stolen, it is not always possible to provide to customers that which they expect to receive, that is, securities which they maintained in their brokerage account. . . . By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing date, the amendments . . . would satisfy customers' legitimate expectations . . . .

S. Rep. No. 95-763, at 2 (1978) (emphasis added). While there may be a basis to disallow customer claims for wholly fictitious securities of nonexistent entities, here the securities set forth on my Final BMIS Statement and prior statements were those of actual companies listed on the stock exchange.

(c) I deposited funds in BMIS in the expectation the amount would grow, my account statements showed such growth, and the balance on my Final BMIS

Statement reflects the benefit of this bargain. The Trustee's formula is an improper and wholly inadequate measure of loss. In *Visconsi v. Lehman Brothers, Inc.*, 244 Fed. Appx. 708 (6th Cir. 2007), the Court declined to set aside an arbitration award that appeared to have applied an expectancy measure of damages against a successor in a Ponzi scheme case, and rejected the "money in/money out" formula as not reflecting the expectations of the parties. The Court explained:

Lehman's out-of-pocket theory misapprehends the harm suffered by Plaintiffs and the facts of this case. Plaintiffs gave \$21 million to Gruttadauria [the dishonest broker], not to hide under a rock or lock in a safe, but for the express purpose of investment, with a hope -- indeed a reasonable expectation -- that it would grow. Thus, the out-of-pocket theory, which seeks to restore to Plaintiffs only the \$21 million they originally invested less their subsequent withdrawals, is a wholly inadequate measure of damages. Had Gruttadauria invested Plaintiffs' money as requested, their funds would like grown immensely, especially considering that Plaintiffs invested primarily throughout the mid-1990s, which, had they hired an honest broker . . . , would have placed their money in the stock market during one of the strongest markets in recent memory. In fact, the fictitious statements issued by Lehman, which were designed to track Plaintiffs' funds as if they had been properly invested, indicate that Plaintiffs' accounts would have grown to more than \$37.9 million (even accounting for the withdrawal of more than \$31.3 million). Plaintiffs thus could have reasonably believed that they were entitled to the full \$37.9 million balance shown, regardless of the amounts of their previous deposits and withdrawals.

*Visconsi*, 244 Fed. Appx. at 713-14 (emphasis added). This applies precisely to my claim.

(d) The Trustee's Determination Letter is contrary to SIPC's own policies and practices, as reflected in the sworn testimony of Stephen Harbeck, SIPC's president and CEO, and its actions in similar liquidation proceedings. For example, in the *New Times* SIPA liquidation, in the context of discussing claims filing deadlines, Harbeck acknowledged that

SIPC would replace securities listed on customer account statements, even if the securities had never been purchased:

Harbeck: [I]f you file within sixty days, you'll get the securities, without question. Whether -- if they triple in value, you'll get the securities. . . . Even if they're not there.

Court: Even if they're not there.

Harbeck: Correct.

Court: In other words, if the money was diverted, converted --

Harbeck: And the securities were never purchased.

Court. Okay.

Harbeck: And if those positions triple, we will gladly give the people their securities positions.

Transcript at 37-39, *In re New Times Securities Services, Inc.*, No. 00-8178 (Bankr. E.D.N.Y. July 28, 2000) (Exhibit C). The Second Circuit's discussion of SIPC's claims processing in *New Times* further indicates that, with respect to customers who thought they were invested in listed securities, SIPC paid customer claims based on the customers' final account statements, even where the securities had never been purchased:

Meanwhile, investors who were misled . . . to believe that they were investing in mutual funds that in reality existed were treated much more favorably. Although they were not actually invested in those real funds -- because Goren never executed the transactions -- the information that these claimants received on their account statements mirrored what would have happened had the given transaction been executed. As a result, the Trustee deemed those customers' claims to be "securities claims" eligible to receive up to \$500,000 in SIPC advances. The Trustee indicates that this disparate treatment was justified because he could purchase real, existing securities to satisfy such securities claims. Furthermore, the Trustee notes that, if they were checking on their mutual funds, the "securities claimants," . . . could have confirmed the existence of those funds and tracked the funds' performance against Goren's account statements.

*In re New Times Secs. Servs.*, 371 F.3d 68, 74 (2d Cir. 2004); *see also* Brief of Appellant SIPC at 23-24, *In re New Times Sec. Servs., Inc.*, No. 05-5527 (Dec. 30, 2005) (arguing that under SIPA “reasonable and legitimate claimant expectations on the filing date are controlling even where inconsistent with transactional reality” such as when the customer receives a confirmation reflecting a purchase, “even where the purchase never actually incurred and the debtor instead converted the cash deposited by the claimant to fund that purchase”).<sup>1</sup> I am situated no differently from the “securities claimants” discussed by the Second Circuit. Accordingly, my claim should be recognized in full.

12. In the event that the Court should determine that claimed gains on deposited funds should not be allowed, then in the alternative, I am entitled to recover interest on such deposited amounts. Such interest is required as a matter of state law, and the United States Supreme Court has determined that in bankruptcy cases, creditor claims, including the right to interest, are determined by state law. *See Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S. 443, 450-51 (2007) (“[W]e have long recognized that the ‘basic federal rule’ in bankruptcy is that state law governs the substance of claims, Congress having generally left the determination of property rights in the assets of a bankrupt’s estate to state law.”).

(a) Under New York law, which is applicable here, funds deposited with the Debtors under these circumstances are entitled to interest. *See, e.g.*, N.Y.C.P.L.R. § 5004; N.Y. Gen. Oblig. § 5-501, *et seq.* Accordingly, Customer claims should be recalculated by adding interest to all funds deposited by customers such as myself.

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<sup>1</sup> There are similar statements in S. Rep. No. 95-763, at 2 (1978) (SIPA seeks to make customers whole even if securities of customers are “lost ... misappropriated, never purchased or even stolen”); H.R. Rep. No. 95-746, at 21 (1977) (customer expects to receive what he believes is in his account even if securities were “never purchased”).



(b) Under New York law, which is applicable here, customers are entitled to prejudgment interest and any returns the Debtors earned on the deposited funds under principles of unjust enrichment. Accordingly, Customer claims should be recalculated by adding the amounts earned by the Debtors on my deposits. *See, e.g., Steinberg v. Sherman*, No. 07-1001, 2008 U.S. Dist. LEXIS 35786, at \*14-15 (S.D.N.Y. May 2, 2008) (“Causes of action such as . . . conversion and unjust enrichment qualify for the recovery of prejudgment interest.”); *Eighteen Holding Corp. v. Drizin*, 701 N.Y.S.2d 427, 428 (1st Dep’t 2000) (awarding prejudgment interest on claims for unjust enrichment and conversion).

13. Fourth Objection. The BMIS Trustee’s action in reducing the amount shown on my Customer Claim by any prior gains reflected on his final BMIS statement or prior BMIS statements is an attempt to avoid such gains without alleging any grounds for avoidance or proving that such gains are avoidable under the Bankruptcy Code’s avoidance provisions. As such, any such disallowance is improper and unjustified, and the Determination Letter should be stricken. *See* Fed. R. Bankr. P. 7001(1); 7008.

14. Fifth Objection. The Trustee’s determination assumes that BMIS never earned funds and therefore all gains reported to customers were “fictitious.” This assumption is contrary to fact. There is significant evidence that, at some time, BMIS was at least in part a legitimate business and therefore all or a portion of the gains were not fictitious. The burden is on the Trustee to show that BMIS never earned any amounts to support customer gains and, if at some point it did earn funds, the dates when it ceased to do so. The Trustee is required to state and prove when the Ponzi scheme began.

15. Sixth Objection. I was required to pay significant income taxes on distributions which the Trustee has alleged are fictitious. The Trustee has justified his proposed

method of calculating claims is fair and reasonable because fictitious gains should not compete dollar for dollar with claims for funds actually deposited by customers, and his proposed method equalizes the treatment of all customers. This justification is not correct insofar as customers did not have the use of reported but fictitious gains because of required income tax payments. Even assuming *arguendo* the Trustee's method is correct, my customer claims should be adjusted by adding all amounts I actually paid as income taxes on allegedly fictitious gains to equalize my treatment with that of other customers. See *SEC v. Byers*, No. 08-7104, 2009 U.S. Dist. LEXIS 63741, at \*11-13 (S.D.N.Y. 2009) (in equitable distribution proceeding, allowing claims for reinvestment of fictitious profits to equitably treat reinvesting customers as compared with customers receiving distributions).

16. Seventh Objection. SIPA provides that (a) SIPC shall pay the first \$500,000 of each customer claims, and (b) customers have an unsecured claim against customer property for the balance of their claims which is paid pro rata with other customers. See 15 USCS § 78fff-3 ("In order to provide for prompt payment and satisfaction of net equity claims of customers of debtor, SIPC shall advance to the trustee [up to] \$500,000 for each customer, as may be required to pay . . . claims."); 15 U.S.C. § 78fff-2(c)(1)(B) (providing that customers of the debtor "shall share ratably in . . . customer property on the basis and to the extent of their net equities").

Documents which accompanied the Trustee's Notice of Determination did not adequately preserve my full rights in connection with the contested claims including, without

limitation, my ability to continue to assert the rights in the Third, Fourth, Fifth and Sixth Objection herein, and also, required certain assignments and releases which the Trustee is not authorized to obtain.

### **RELIEF REQUESTED**

17. For the reasons stated herein, my Customer Claim should be allowed in its entirety.

18. For the reasons stated herein, the Court should direct SIPC to issue immediate payment to me in the amount of \$168,984.62 plus interest from the date of the Determination Letter without imposing conditions to payment which are not authorized or warranted.

19. The BMIS Trustee's determination amounts to an improper disallowance of a claim that has prima facie validity. *See* Bankruptcy Code § 502(a). The BMIS Trustee has offered no factual or legal basis for his Determination. The BMIS Trustee's Determination Letter, and the objections contained therein, should be stricken, or alternatively, the BMIS Trustee should describe his position in detail including all relevant facts, legal theories, and authorities. Upon the filing of such a statement, this matter will be a contested proceeding under Rule 9014, and I will file a response.

20. I request such other relief as may be just and equitable.

### **CONCLUSION**

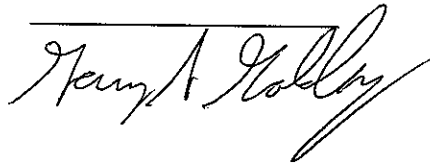
21. I reserve the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of my right to object on any additional grounds.

22. I reserve all rights set forth Rule 9014, including, without limitation, rights of discovery. *See* Fed. R. Bankr. P. 9014.

23. I reserve all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever.

24. I incorporate by reference all reservations of rights set forth in my Customer Claim.

Dated: October 27, 2009

A handwritten signature in black ink, appearing to read "Gary S. Goldberg", with a horizontal line above it.

Gary S. Goldberg  
45 Holly Oak Dr.  
Voorhees, NJ 08043  
Tel: (856) 772-9661  
Fax: (856) 772-9661

email: garygoldberg@comcast.net

Exhibit A

**BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

In Liquidation

**DECEMBER 11, 2008<sup>1</sup>**

**NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM**

October 19, 2009

GARY S GOLDBERG  
45 Holly Oak Drive  
Vorhees, NJ 08043

Dear MR. GOLDBER:

**PLEASE READ THIS NOTICE CAREFULLY.**

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1ZB394 designated as Claim Number 001341:

Your claim for a credit balance of \$168,984.62 and for securities is **DENIED**. No securities were ever purchased for your account.

Further, based on the Trustee's analysis, the amount of money you withdrew from your account at BLMIS (total of \$46,000.00), as more fully set forth in Table 1 annexed hereto and made a part hereof, is greater than the amount that was deposited with BLMIS for the purchase of securities (total of \$28,659.77). As noted, no securities were ever purchased by BLMIS for your account. Any and

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<sup>1</sup> Section 78lll(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78lll(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

all profits reported to you by BLMIS on account statements were fictitious.

As reflected in Table 1, certain of the transfers into or out of your account have been adjusted. As part of the Trustee's analysis of accounts, the Trustee has assessed accounts based on a money in/money out analysis (i.e., has the investor deposited more or less than he or she withdrew from BLMIS). This analysis allows the Trustee to determine which part of an account's balance is originally invested principal and which part is fictitious gains that were fabricated by BLMIS. A customer's allowed claim is based on the amount of principal in the customer's account.

When ever a customer requested a transfer from one account to another, the Trustee analyzed whether the transferor account had principal in the account at the time of the transfer. The available principal in the account was transferred to and credited in the transferee account. Thus, the reason that the adjusted amount of transferred deposits in Table 1 is less than the purported transfer amount is that the transferor account did not have sufficient principal available to effectuate the full transfer.

The difference between the purported transfer amount and the adjusted transfer amount is the amount of fictitious gain that was transferred to or from your account. Under the money in/money out analysis, the Trustee does not give credit for fictitious gains in settling your allowed claim.

Since there were no profits to use either to purchase securities or to pay you any money beyond the amount that was deposited into your BLMIS account, the amount of money you received in excess of the deposits in your account (\$17,340.23) was taken from other customers and given to you. Accordingly, because you have withdrawn more than was deposited into your account, you do not have a positive "net equity" in your account and you are not entitled to an allowed claim in the BLMIS liquidation proceeding. Therefore, your claim is **DENIED** in its entirety.

Should a final and unappealable court order determine that the Trustee is incorrect in his interpretation of "net equity" and its corresponding application to the determination of customer claims, the Trustee will be bound by that order and will apply it retroactively to all previously determined customer claims in accordance with the Court's order. Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by you in having your customer claim re-determined in accordance with any such Court order.

Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by the Trustee against you.

**PLEASE TAKE NOTICE:** If you disagree with this determination and desire a hearing before Bankruptcy Judge Burton R. Lifland, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (BRL) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court and the Trustee within **THIRTY DAYS** after October 19, 2009, the date on which the Trustee mailed this notice.

**PLEASE TAKE FURTHER NOTICE:** If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

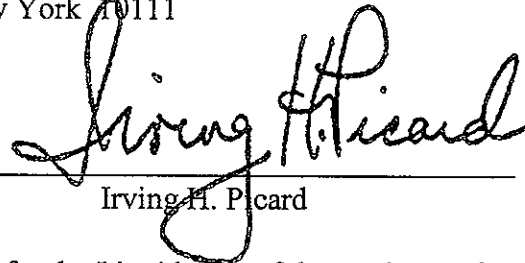
**PLEASE TAKE FURTHER NOTICE:** If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

**PLEASE TAKE FURTHER NOTICE:** You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for  
the Southern District of New York  
One Bowling Green  
New York, New York 10004

and

Irving H. Picard, Trustee  
c/o Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111

A handwritten signature in black ink, reading "Irving H. Picard", is written over a horizontal line. The signature is cursive and stylized.

Trustee for the Liquidation of the Business of  
Bernard L. Madoff Investment Securities LLC

DEPOSITS			
DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
10/2/2000	TRANS FROM 1ZA39330	\$100,000.00	\$28,659.77
<b>Total Deposits:</b>		\$100,000.00	\$28,659.77
WITHDRAWALS			
DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
4/10/2006	CHECK	(\$3,000.00)	(\$3,000.00)
3/20/2007	CHECK	(\$21,000.00)	(\$21,000.00)
10/10/2007	CHECK	(\$12,000.00)	(\$12,000.00)
5/20/2008	CHECK	(\$10,000.00)	(\$10,000.00)
<b>Total Withdrawals:</b>		(\$46,000.00)	(\$46,000.00)
<b>Total deposits less withdrawals:</b>		\$54,000.00	(\$17,340.23)



## CUSTOMER CLAIM

Claim Number \_\_\_\_\_

Date Received \_\_\_\_\_

## BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

Irving H. Picard, Esq.  
Trustee for Bernard L. Madoff Investment Securities LLC  
Claims Processing Center  
2100 McKinney Ave., Suite 800  
Dallas, TX 75201

Provide your office and home telephone no.

OFFICE: 856 566 6718HOME: 856 772 9661

Taxpayer I.D. Number (Social Security No.)

021-52-2108

Account Number: 1ZB394

GARY S GOLDBERG  
45 HOLLY OAK DRIVE  
VOORHEES, NJ 08043

(If incorrect, please change)

**NOTE:** BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

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1. Claim for money balances as of December 11, 2008:

a. The Broker owes me a Credit (Cr.) Balance of

\$ 168,984.62

b. I owe the Broker a Debit (Dr.) Balance of

\$ \_\_\_\_\_

- c. If you wish to repay the Debit Balance,  
please insert the amount you wish to repay and  
attach a check payable to "Irving H. Picard, Esq.,  
Trustee for Bernard L. Madoff Investment Securities LLC."

If you wish to make a payment, it must be enclosed  
with this claim form. \$ \_\_\_\_\_

- d. If balance is zero, insert "None." \_\_\_\_\_

2. Claim for securities as of December 11, 2008:

**PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.**

- |   | <u>YES</u>            | <u>NO</u> |
|---|-----------------------|-----------|
| a. The Broker owes me securities        | <u>See Section 1a</u> | _____     |
| b. I owe the Broker securities          | _____                 | _____     |
| c. If yes to either, please list below: |                       |           |

Date of Transaction (trade date)	Name of Security	The Broker Owes Me (Long)	I Owe the Broker (Short)
<u>See statement for account # 1-78394-3 Dated 11/30/08 ✓</u>	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or

information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

**PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.**

**NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.**

	<u>YES</u>	<u>NO</u>
3. Has there been any change in your account since December 11, 2008? If so, please explain.	_____	_____ ✓
4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker?	_____	_____ ✓
5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker?	_____	_____ ✓
6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s)	_____	_____ ✓
7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming.	_____	_____ ✓
8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers.	_____	_____ ✓

9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? if so, give name of that broker. \_\_\_\_\_ ✓

Please list the full name and address of anyone assisting you in the preparation of this claim form: \_\_\_\_\_

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

**IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.**

**THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.**

Date 1/14/09 Signature Henry A. Holberg  
Date \_\_\_\_\_ Signature \_\_\_\_\_

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

**This customer claim form must be completed and mailed promptly, together with supporting documentation, etc. to:**

Irving H. Picard, Esq.,  
Trustee for Bernard L. Madoff Investment Securities LLC  
Claims Processing Center  
2100 McKinney Ave., Suite 800  
Dallas, TX 75201

BERNARD L. MADOFF  
INVESTMENT SECURITIES LLC  
New York ☐ London

885 Third Avenue  
New York, NY 10022  
(212) 230-2424  
800 334-1343  
Fax (212) 838-4061

Affiliated with  
Madoff Securities International Limited  
12 Berkeley Street  
Mayfair, London W1J 8DT  
Tel 020 7493 6222

BARRY S GOLDBERG  
25 HOLLY OAK DRIVE  
MOORHEES NJ 08043

*Document*

YOUR ACCOUNT NUMBER  
1-ZB394-3-0

PERIOD ENDING  
11/30/08

YOUR TAX PAYER IDENTIFICATION NUMBER  
\*\*\*\*\*2108

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1

BOUGHT RESERVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDIT TO YOUR ACCOUNT
126		1491	BALANCE FORWARD		7,487.78	
90		1993	WELLS FARGO & CO NEW	29.800	3,759.80	
78		5817	HEWLETT PACKARD CO	34.900	3,144.00	
51		6319	MAL-MART STORES INC	55.830	4,357.74	
189		10143	INTERNATIONAL BUSINESS MACHS	87.270	4,452.77	
207		10645	EXXON MOBIL CORP	72.880	13,781.32	
99		14971	INTEL CORP	14.510	3,011.57	
135		19296	JOHNSON & JOHNSON	59.580	5,901.42	
72		23622	J.P. MORGAN CHASE & CO	38.530	5,206.55	
42		27948	COCA COLA CO	44.660	3,217.52	
78		32274	MCDONALDS CORP	55.370	2,326.54	
285		36600	MERCK & CO	28.550	2,229.90	
144		40926	MICROSOFT CORP	21.810	6,226.85	
57		53904	ORACLE CORPORATION	17.300	2,496.20	
33		54406	PEPSICO INC	56.410	3,217.37	
243		58230	APPLE INC	100.780	3,326.74	
57		58732	PFIZER INC	16.940	4,125.42	
108		62556	ABBOTT LABORATORIES	54.610	3,114.77	
39		63058	PROCTER & GAMBLE CO	64.080	6,924.64	
75		66882	AMGEN INC	59.160	2,308.24	
180		67384	PHILLIP MORRIS INTERNATIONAL	43.600	3,273.00	
60		71208	BANK OF AMERICA	21.590	3,893.20	
195		71710	QUALCOMM INC	33.770	2,028.20	
			CITI GROUP INC	12.510	2,446.45	
			CONTINUED ON PAGE 2			

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**ERNARD L. MADOFF**  
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Mayfair, London W1J 8DT  
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RY S GOLDBERG

HELLY OAK DRIVE  
NJ 08043

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ACCT BORROWING	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
25,000	27,807	54107	FIDELITY SPARTAN U S TREASURY MONEY MARKET U S TREASURY BILL DUE 03/26/2009	1 99.926	24,981.50	27,807.00
11,817		63143	FIDELITY SPARTAN U S TREASURY MONEY MARKET 3/26/2009	1	11,817.00	
			NEW BALANCE		15,869.45	
213			SECURITY POSITIONS	MKT PRICE		
57			AT&T INC	28.560		
39			ABBOTT LABORATORIES	52.390		
33			AMGEN INC	55.540		
180			APPLE INC	92.670		
75			BANK OF AMERICA	16.250		
219			CHEVRON CORP	79.010		
195			CISCO SYSTEMS INC	16.540		
72			CITI GROUP INC	8.290		
108			COCA COLA CO	46.870		
54			COMCAST CORP	17.340		
189			CL A			
381			CONOCOPHILIPS	52.520		
			EXXON MOBIL CORP	80.150		
			GENERAL ELECTRIC CO	17.170		
			CONTINUED ON PAGE 4			

(13)



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New York ☐ London

GARY S GOLDBERG

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Tel 020 7493 6222

YOUR ACCOUNT NUMBER:  
1-LB394-3-0

PERIOD ENDING  
11/30/08

YOUR TAX PAYER IDENTIFICATION NUMBER  
\*\*\*\*\*2108

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4

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRIN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
9	90			GOOGLE	292.960		
207	51			HEWLETT PACKARD CO	35.280		
135	99			INTEL CORP	13.800		
42	78			INTERNATIONAL BUSINESS MACHS	81.600		
285	144			J.P. MORGAN CHASE & CO	31.660		
57	243			JOHNSON & JOHNSON	58.580		
75	108			MCDONALDS CORP	58.750		
60	45			MERCK & CO	26.720		
11,817	63			MICROSOFT CORP	20.220		
45	36			ORACLE CORPORATION	16.090		
25,000	36			PEPSICO INC	56.700		
				PFIZER INC	16.430		
				PHILLIP MORRIS INTERNATIONAL	42.160		
				PROCTER & GAMBLE CO	64.350		
				QUALCOMM INC	33.570		
				SCHLUMBERGER LTD	50.740		
				FIDELITY SPARTAN	1		
				U S TREASURY MONEY MARKET			
				U S BANCORP	26.980		
				UNITED PARCEL SVC INC	57.600		
				CLASS D			
				U S TREASURY BILL	99.971		
				DUE 03/26/2009			
				3/26/2009			
				UNITED TECHNOLOGIES CORP	48.530		
				CONTINUED ON PAGE 5			

PLEASE REMAIN THIS STATEMENT FOR INCOME TAX PURPOSES

(11)



## INCOME TAX PURPOSES

**BERNARD L. MADOFF**  
**INVESTMENT SECURITIES LLC**  
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 Tel 020 7493 6222

**Y S GOLDBERG**

**HOLLY OAK DRIVE**  
**RIFLES**

**NJ 08043**

YOUR ACCOUNT NUMBER  
**1-78394-3-0**

PERIOD ENDING  
**11/30/08**

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YOUR TAX PAYER IDENTIFICATION NUMBER  
**\*\*\*\*\*2108**

ORDERING	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
			YEAR-TO-DATE SUMMARY			
			DIVIDENDS			
			GROSS PROCEEDS FROM SALES			1,179.13
						815,161.93

(16)

EXHIBIT C  
Pg 27 of 29

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----  
In the Matter of: )

NEW TIMES SECURITIES )  
SERVICES, INC. )

Debtor )  
-----

1) Application filed by proposed class claimants to  
authorize and approve the filing of a class proof of claim  
and for a certification of the putative class and to  
shorten time for the hearing

Memorandum by proposed class claimants

Memorandum by Plaintiff Securities Investor Protection  
Corporation

Memorandum of law by Trustee James W. Giddens

Affidavit of Derek J. T. Adler in opposition

United States Bankruptcy  
Court  
Westbury, New York

July 28, 2000  
10:00 a.m.

B E F O R E:

HONORABLE STAN BERNSTEIN  
United States Bankruptcy Judge

A P P E A R A N C E S:

HUGHES HUBBARD & REED LLP  
Attorney for James W. Giddens, Trustee  
One Battery Park Plaza  
New York, New York 10004  
BY: JAMES W. KOBAK, JR., ESQ.  
DANIEL S. LUBELL, ESQ.

(516) 741-5342 Tankoos Reporting Co. (212) 349-9692

1 THE COURT: Okay, so, you're telling me that  
2 this is very different from the open transaction.

3 MR. HARBECK: Correct.

4 THE COURT: Okay, so, now we're dealing with a  
5 closed transaction, where the money is there, you have  
6 interest in a --

7 MR. HARBECK: The securities are there.

8 THE COURT: -- real --

9 MR. HARBECK: Not the money is there. The  
10 securities are supposed to be there.

11 THE COURT: No, no -- yeah, you have -- you  
12 have an ownership interest in the securities; namely,  
13 shares of the mutual fund, of a mutual fund that is real,  
14 existing as of the petition date.

15 MR. HARBECK: Dreyfus, Janus, you name it.

16 THE COURT: Okay.

17 MR. HARBECK: Now, what Congress did is it said  
18 it wants to give the Trustee and SIPC a very good idea of  
19 what securities have to -- that the Trustee is going to  
20 have to go out into the marketplace and buy. So, if you  
21 file within sixty days, you'll get the securities, without  
22 question. Whether -- if they triple in value, you'll get  
23 the securities.

24 But, if --

25 THE COURT: Even -- even if --

MR. HARBECK: Even if they're not there.

THE COURT: Even if they're not there.

MR. HARBECK: Correct.

THE COURT: In other words, if the money was diverted, converted --

MR. HARBECK: And the securities were never purchased.

THE COURT: Okay.

MR. HARBECK: And, if those positions triple, we will gladly give the people their securities positions.

THE COURT: But, you've got to jump.

MR. HARBECK: But, you've got to act fast, yeah. And, Congress did that --

THE COURT: Because -- because --

MR. HARBECK: -- because of the fluctuations.

THE COURT: -- because there's a concern -- because there's a concern that the value of this mutual fund might skyrocket and it's going to cost SIPC a lot more money.

MR. HARBECK: Six months down the line, that's right.

THE COURT: Okay, all right. And, you don't want people playing games with you.

MR. HARBECK: That's correct.

THE COURT: Deciding when they're going to --